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91-839

Supreme Court, U.S.
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No._____

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM 1991

LUIS A. SORO A/K/A
CITICORP MORTGAGE CO. INC., Petitioners,

versus

Citicorp ET. AL., Respondent

Petition For A Writ Of Certiorari
To The United States Court Of Appeals
For The Eleventh Circuit

PETIITON FOR WRIT OF CERTIORARI

LUIS A. SOROA/K/A
CITICORP MORTGAGE CO. INC.,
975-41 Street Suite 214
Miami Beach, Florida 33140
(305) 534-5000

QUESTIONS PRESENTED

1. Whether the Honorable Court of Appeals for the 11 Circuit erred in afferming the opinion of the District Court in not holding the term "citicorp" GENERIC, INVALID, FRAUDULENTLY OBTAINED, UNENFORCEABLE, FATALLY WEAK and EXTENSEVELY USED BY THOUSANDS OF FLORIDA CORPORATIONS and failed to cancel the registration # (982,066) as provided by 15 U.S.C. § 1119 McCarthy supra § 12:18 at 441-42 and failed to observed that confusion between service marks and similarty of appearance is determined on the basis of the total effect of the designation rather that on a comparison of individual features.

2. Whether the Honorable Court of appeals for the 11 Circuit error in afferming the opinion of the District Court when it abused its discretion in the order signed which states that the counter claims filed by Soro are dismissed as untimely and for lack of standing and failed to realize that this was the first and only time I was offered to file them and request a jury trial to recover the gargantuan damages I have suffered and prevent a massive debacle by a bankrupt corporation in Florida.

3. Whether the Court of appeals errored in granting the summary judgment filed out of time and not touching on the major issues.

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NO_____

IN THE SUPREME COURT
OF THE
UNITED STATES OF AMERICA

LUIS A. SORO A/K/A
CITICORP MORTGAGE CO. INC.
PETITIONERS

versus

Citicorp ET. AL.,
ResPONDENT

PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

Petitioner, Luis A. Soro a/k/a CITICORP MORTGAGE CO. INC., Respectfully prays that a writ of certiorari issue to review the judgment and Opinion of the United States Court of Appeals for the Eleventh Circuit afferming the Lower Court's Opinion.

INDEX TO APPENDICES

Appendix A — The Unpublished written opinion of the Court of Appeals Eleventh Circuit.

Appendix B — THE Unpublished written opinion of the District Court for the Southern District of Florida

Appendix C — The Unpublished written opinion of the Court of Appeals Eleventh Circuit deniel of a petition for a rehearing.

Respondant has a generic and invalid term and they have changed their name in Florida in Florida to Citibank. I Luis A. Soro have not had a fair trial in front of a Florida jury and Respondant poses an enormous threat to the entire banking system here in Florida if they are permitted to remain in Florida. Respondant has violated Federal and Florida banking laws and rules, and will continue to do so until they are stopped and directed out of Florida.

I am Respectfully requesting that I be able to face my accuser in a court of law just like the SIX (6th) amendment to the U.S. Constition says.

Opinions BELOW

The opinion of the Court of Appeals which was written but unpublished appears in Appendix A to this Petition. The Unpublished written opinion of the District Court For the Southern District of Florid appears in Appendix B to this petition. The denial of a rehearing appears in Appendix C.

JURISDICTION

The Court of Appeals, Opinion in this matter was filled on July 15, 1991. A timely petion for a re-hearing was filed and the Court of Appeals for the Eleventh Circuit denied it on August 16, 1991 and is set forth in Appendix C. This Court's Jurisdiction is invoked under Title 28, U.S.C. § 1254 (1) and 28 U.S.C. § 2101 (c).

CONSTITIONAL AND STATUTORY PROVISIONS

I Luis A. Soro did not get a fair trial. Respondant has HARRASSED me in a gargantuan maner and I did not get my share of justice under the law. As I watch the Judge Thomas hgearings I saw that he was accused of a lot of things that were not true and he was given a fair chance to clear his good name. My good name has been taken away from me by the lower Courts and I, have not had a fair chance to clear my name by a Florida Jury. Also the SIX (6) amedment to the U.S. Constitution states that I will be able to face my accuser in a court of law. Please review the laws and permit me to face a Florida jury.

STATEMENT OF THE CASE

The United States District Court for the Southern District of Florida had jurisdiction pursuant to Title 28 U.S.C. 1332, the amount of damages I had and because

this is a compulsory Counterclaim, venue is proper in the District Court pursuant to 28 U.S.C. § 1391.

On August 26, 1985 a complaint was filed in the District Court for the Southern District of Florida against CITICORP MORTGAGE CO. INC., for alleged trademark infringing of a generic, unenforcable, and cancellable term. On May 13,1986 the summons was served on me vie a third person making it improperly served.

On JANUARY 14, 1987 an ammended complaint including me Luis A. Soro personally as a party to the matter was filed. On March 12, 1987 Respondent filed a moot Motion for Summary Judgment filed out of time with the time schedule ordered by the Honorable Judge Eugene P. Spellman on December 19, 1986. The case continued and on September 8, 1987 a summary Judgment was entered for Respondent on all counts against CITICORP MORTGAGE CO. INC. and me Luis A. Soro personally. On October 6, 1987 I appealled the District Court's opinion to the Eleventh Circuit Court of Appeals.

On June 30, 1988 the Court of Appeals reversed and remanded the case in part and dismissed in part. The Court did not realize that I Luis A. Soro was a/k/a CITICORP MORTGAGE CO. INC., and therefore I could also bring an appeal on behave of CITICORP MORTGAGE CO. INC.,. On October 6, 1988 the District Court again granted the moot motion for summary judgment without standing against me Luis A. Soro. I again appealled the District Court's opinion because it was providing protection to a generic, invalid, uninforcable, fraudulently, fatally weak, and extensevely used by thousands of Florida corporations the term "citicorp". Also the District Court's opinion was not consistent with the case law that was provided or that should be review when entering an opinion in this case. Centrust Bank v. Suntrust Bank, 87-1314 Civ-ALH (Miami), Chase Federal Bank v. Chase Manhattan Bank 84-1642-Civ-WMH (Miami) Cummins Engine Co. Inc. v. Continental Moters Corp. & the CANCELLED tradename "Turbo Deisel" 359 F.2d 892,894, 53 C.C.P.A. 1167, 1169 (1966) Fidelity Bond and Mortgage CO. v. Fidelity Bond and Mortgage Co. of Texas 37 F.2d 99 (5th Cir. 1930),

First Southern Federal Savings and Loan Asso. v. First Savings and Loan Asso. 614 F.2d 71, 74 (5th Cir. 1980) Murphy Door Bed CO. v. Murphy Bed Co. (2nd Cir. 1989) Steak & BREW v. Beef & Brew 370 F. Supp. 1030 (1974) Sun Bank v. Sun Federal 615 F.2d. 311 (5th Cir. 1981) Surf Club v. Tatem Surf Club 151 Fla. 406-10 So. 2d 554 -557 (1942), Penn Yan Boats v. Sea Lark Boats 359 F. Supp. 948 (S.D. Fla. 1972) affd. Norton v. Curtiss 433 F. 2d 779 (C.C.P.A. 1970), Kaiser Aluminum & Chemical Corp. v. Monolith Portland Midwest Co. 407 F.2d 288 (9th Cir. 1969) Dresser Industries, Inc. v. Eltra Corp. 435 F. Supp. 153, 194-195 (N.D. Ohio 1977) Carter Wallace, Inc. v. Davis-Edwards Pharmacal Corp. 443 F. 2d 867 (2d Cir. 1971) Trizillo v. P&Z Mergentime 532 F. 2d 1393 (D.C. Cir. 1976) Standerd Oil Co. Montedison S.P.A. 479 F. Supp. 370 (Del 1980) See 15 U.S.C.§ 1120 Emphasis Added). My company name has been stolen from me without a jury trial after I had had it for seven (7) years and it was registered to me in Florida. I am also Respectfully requesting that this Honorable Court return it to me. I am seeking compensation for the gargantuan damages Respondent has caused me when they Breached the contract I had with the telephone Yellow Pages in Florida.

Please see the Penzoil Co. v. Texaco, Inc. case # 84-05905 (151st Dist. Ct., Harris County, Tex. Nov. 15, 1985) in which Pennzoil was awarded 10.53 Billion dollars for tortious interference they suffered from Texaco. My case is very similar to the Penzoil case and I have exhaused all my options in the lower Courts and I have not been able to face a Florida jury to state my case, and get the justice I am due.

I am Respectfully requesting that if this Honorable Court elects not to address the issues presented at this time, it remand the matter to the Court of Appeals for a redermination of this Court's opinion in the cases mentioned, I have not received justice.

REASONS FOR GRANTING THE WRIT

CERTIORARI SHOULD BE GRANTED FOR 2 REASONS: This petition presents an issue resolved by implication by this Court but has not specifically and unequivocally decided by this Court, and the opinions below conflicts by implication with previous decisions of this Court and with the decisions of other circuits. The Courts have constently prevented a generic term used in every type of business from being protected.

See case law authorities listed in this petition. Setting all this aside Respondent is in very poor financial condition and must be prevented from buying failed savings & loans & banks. Rep. John Dingell said in a report on U.S. Banks Citicorp is broke. I Have not recieved a fair trial and I should be able to face my accuser in a court of law just like the SIX (6) amedment to the U.S. Constitution says, and in front of a Florida jury.

Federal law and Florida laws related to banking strickly prohibits bank holding companies to establish a bank in Florida. I have been Harrassed, intimidated, and threaten and I have done nothing wrong, all I did was form my corporation in good faith and with clean hands and with the approval of the Secretary of State of Florida and the Florida Comptroller's Office. To continue I was here first and Respondent was barred from entering my area which is the State of Florida. They want to STEAL my name in my area and this is not fair and I have not been able to present my side of the case orally to a Florida jury.

Respondent has caused me gargantuan damages and this Honorable Court should not tolerate this massive abuse to occur to a small defendless corporation and its young president.

This Honorable Court should review the relief sought, the compensation that is requested and that should be granted.

The Honorable District Court erred in failing to weigh the factors "identity of services facilities and customers" the weakness of the mark, apparent fraud, and the fact that we have traditionally tolerated a greater degree of resemblance among the names of financial institutions. Centrust Bank v. Suntrust Bank 87-1314 Civ. ALH (Miami) Chase Federal Bank v. Chase Manhattan Bank 84-1642 Civ. WMH Miami) Sun Bank v. Sun Federal 615 F.2d 331 (5th Cir. 1981) This error was affermed by the Eleventh Circuit Court of Appeals, and I have never been able to present my case orally at any level. Furthermore if there was no likelihood of confusion in this case because Respondent was barred from entering my area the State of Florida, hence no trademark infringing could occur. Wholly apart from that "citicorp" is to weak a mark to merit trademark protection. The Honorable Lower Courts failed to apply trade regulation key # 347 which states in determining likelihood of confusion between service marks, similarty of appearance is determined on the basis of the total effect of the designation rather that on a comparison of individual

features. In this service mark infringent action I have provided evidence of extensive third-party use of the words "citi" or "city" or "cities" and corp or corporation used consecutively or in the trade name and based on this conclusion can be drawn with impressive evidence that there would be no likelihood of confusion between the two marks, specially when a service mark is itself weak, minor additions may effectivelly negate any confusing similarity.

Conclusion

For all the reasons stated above, a writ of certiorari should be issued to review the judgement and the opinion of the Court of Appeals in this matter. Justice requires that I be heard orally. Respodent has entered my area and should be directed out of my area as soon as possible. My business reputation has been destroyed by a bankrupt company that appears to believe it does not have to follow the laws and rules of the court. The Motion for summary judgment was not filed withen the time schedule set by the Court and it has been over five years and I have never recieved a copy of that motion from them.

Respondent defense is a sham and it is time that a court of law halts them before they cause more damages and problems to other people that are not guilty of anything.

The Honorable District Judge Eugene P. Spellman on December 19, 1986 Ordered that all Motions **must** be filed 15 days prior to the pretrial conference. (14) Fourteen days prior to the pretrial conference Respondent filed a moot motion for summary judgment according to the Orders of the Honorable Judge Eugene P. Spellman of December 19, 1986. I Luis A. Soro a/k/a CITICORP MORTGAGE CO. INC., WAS not informed or approved or had any knowlege of a Motion for summary judgment and I certainly would not have had approved of it in violation of the Judge's order. I Luis A. Soro was also known as CITICORP MORTGAGE CO. INC., but I was not able to bring or file any motion on my behalf. I have been convicted of a very serious crime trademark infringing and I have not had a chance to face my accuser in a court of law just like the 6th amendment to the United States says.

I have been financially decapitated by Respondent because they BREACHED a Contract I had with the telephone Yellow Pages in the most important year for the mortgage business in 50 years. My company name has been stolen from me and taken away.

I had this name for 7 years and it was registered to me in Florida by the Secretary of State and the Florida Comptroller's office.

The Penzoil Co. v. Texaco Inc., case # 84-05905 (151st Dist. ct.. Harris County Tex. Nov. 15, 1985) is very similar to my case. Penzoil was awarded 10.53 billion dollars for tortious interference they suffered from Texaco.

I have exhausted all my options in the lower Courts. The Courts have constently prevented a generic term from being protected, and case law since 1930 is on my side. I have not recieved a fair trial by jury although I formed my corporation in good faith and with clean hands and I first used the term CITICORP MORTGAGE CO. INC., in Florida. Respondent was barred from entering Florida because they are a bank holding company and they finilly sneaked into the state in 1984 three (3) years after I had already established my corporation. The lawsuit was filed 5(five) years after I had formed my company and two years after they entered Florida. That means that we operated in the same area for 2(two) years or 730 days before they filed suit.

[1]If this Honorable Court elects not to address this writ at this time, it is Respectfully requested that the writ issued and that the matter be remanded to the Court of Appeals for redermination in light of this Court's opinion in other cases

A gargantuan injustice has been done to me in the lower courts. I feel just like Justice C. Thomas the new member of this high Court. He was accused of a lot of things but he was given the chance to clear his name.

I have been brutally attacked by an incompetent, bankrupt, company that is in worse financial shape that BCCI, Centrust, Lincoln Savings & Loan, SILVERADO SAVINGS & LOAN and SOUTHEAST BANK, combined, and should be directed OUT OF FLORIDA, and I have not been given the chance to clear my good name, recover the massive damages I have suffered, and have my registered name returned to me by a Florda jury. Respondent should be punished for their reckless actions. Please grant the writ, ask the Honorable Justice Thomas how it feels to be accused and not having the chance to verbally defend yourself.

Respondent was in flagrant violation of both Federal and Florida banking law and they mysteriously changed their name in Florida, and I believe this should be examined microscopically by this court.

This change of name only shows implied malice behind Respondent sophisticated manipulation of both Federal and Florida banking laws. Their presence in Florida should be termed intolerable under whatever name they do business here, they are exposing the entire State to a gargantuan debacle and that is only a matter of time.

Respectfully
submitted,

LUIS A. SORO A/K/A
CITICORP MORTGAGE CO. INC.,
975-41Street Suite 214
Miami Beach, Florida 33140

APPENDIX A

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 88-6121

D.C. Docket No. 85-2960-CIV-EPS

CITICORP, Plaintiff-Counterclaim Defendant-Appellee,

versus

CITICORP MORTGAGE CO. INC., Defendant,

Luis Soro, Defendant-Counterclaim Plaintiff-Appellant

Appeal from the United States District Court for the Southern District of Fla.

(July 15, 1991)

Before: Fay, Kravitch, and Birch, Judges

PER CURIAM:

AFFIRMED. See Circuit Rule 36-1.

Citicorp,
Plaintiff,

vs

Luis SORO, an individual
Defendant,

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF FLORIDA

CASE NO. 85-2960
CIV-SpellMAN

SUMMARY FINAL JUDGMENT

THIS CAUSE comes before the Court upon Plaintiff Citicorp's (CITICORP) Motion for Summary Judgment. This action was first brought against CITICORP MORTGAGE COMPANY, INC. (CITICORP MORTGAGE). CITICORP MORTGAGE answered and subsequently filed two counterclaims on October 6, 1986. On March 5, 1987, Plaintiff filed its Amended Complaint adding Defendant, LUIS SORO ("SORO") as a party defendant. Both defendants filed answers and affirmative defenses to that Amended Complaint. Although Soro was represented by counsel at that time, SORO continually attempted to file Motions in his own behalf and on behalf of CITICORP MORTGAGE.

USE OF NAME CITICORP

When this Court granted Summary Judgment against CITICORP MORTGAGE ON September 8, 1987, CITICORP MORTGAGE was directed to cease all infringing activities, to change the corporate name and to deliver all infringing material for destruction. This Court informed SORO at the August 24, 1988, hearing that when the mandate from the 11th Circuit was received, this Court would issue an Order directing SORO, as the representative of CITICORP MORTGAGE, to initiate a change with regard to that name in accordance with this Court's summary final judgment. The Court went on to explicity warn SORO that in the event that CITICORP MORTGAGE failed to abide by that Order, this Court would hold SORO responsible and would initiate contempt proceeding by way of civil contempt against the officer to whom that Order was and is directed, to wit, SORO. SORO was told at that time that he would have ten (10) days from the date of this Court's Order to

conform to the Summary Judgment dated September 8, 1987, and change the name of the corporatition on the records of the Secretary of State's Office for the State of Florida.

The mandate was received from the Eleventh Circuit on September 8, 1988. Therefore, SORO has ten days from the date of this Order to comply with this Court's instructions contained in the September 8, 1988, Order and given to SORO in open court on August 24, 1988. Failure to do so will result in SORO being held in civil contempt.

Accordingly, it is hereby

ORDERED AND ADJUDGED that the Plaintiff's Motion for Summary Judgment is GRANTED. It is further ORDERED that the Counterclaim filed by SORO is DISMISSED as untimely, and for lack of standing. Defendant SORO, as sole stockholder and officer of CITICORP MORTGAGE COMPANY, INC. is hereby directed to initiate a name change for CITICORP MORTGAGE and to comply with the

other directives contained in this Court's Summary Final Judgment dated September 8, 1987, within ten (10) days of the date of this Order.

DONE AND ORDERED in chambers at Miami, Florida this 6 day of Oct, 1988.

UNITED STATES DISTRICT JUDGE

cc: all counsel of record

APPENDIX C

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 88-6121

CITICORP, ET. AL.,
Plaintiff-Counterclaim
Defendant-Appellee,

VERSUS

CITICORP MORTGAGE CO. INC.,
Defendant,

Luis Soro, Defendant-Counterclaim
Plaintiff-Appellant

Appeal from the United States District
Court for the Southern District of Florida

ON PETITION(S) FOR REHEARING

( )

BEFORE: FAY, KRAVITCH, and BIRCH, Circuit Judges.

PER CURIUM:

The petition(s) for rehearing filled by Appellant is denied.

Entered: Aug. 16,1991

ENTERED FOR THE COURT: Phyllis Kravitch
UNITED STATES CIRCUIT JUDGE